

1 Robert W. Norman (SBN 025328)  
bnorman@houser-law.com  
2 Solomon S. Krotzer (SBN 027985)  
skrotzer@houser-law.com  
3 HOUSER & ALLISON, APC  
4 2929 N. Central Ave., Suite 1560  
Phoenix, Arizona 85012  
5 Phone: (480) 428-8370

6 Attorneys for Defendants, Ocwen Loan Servicing, LLC, Mortgage Electronic  
7 Registration Systems, Inc., OneWest Bank, N.A. and Defendant/Counterclaimant/Third-  
8 Party Plaintiff Deutsche Bank National Trust Company As Trustee For IndyMac INDX  
9 Mortgage Loan Trust 2005-AR14, Mortgage Pass-Through Certificates Series 2005-  
AR14

10 **IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

11 KATRINA PERKINS STEINBERGER,  
12 as Executor of the Estate of Charles A.  
Perkins, deceased, and individually,

13  
14 Plaintiff,

15 vs.

16 INDYMAC MORTGAGE SERVICES, a  
17 division of ONEWEST BANK, F.S.B., a  
Federally Chartered Savings Bank;  
18 DEUTSCHE BANK NATIONAL TRUST  
COMPANY, as Trustee of the INDYMAC  
19 INDX MORTGAGE LOAN TRUST  
20 2005-AR14; MORTGAGE  
ELECTRONIC REGISTRATION  
21 SYSTEMS, INC., a Delaware  
Corporation; OCWEN LOAN  
22 SERVICING, LLC, a Limited Liability  
23 Company; KEELEY KRISTINE SMITH,  
an Attorney licensed with the Arizona  
24 State Bar; JOHN AND JANE DOES 1-  
25 1000, XYZ CORPORATIONS 1-15; ABC  
LIMITED LIABILITY COMPANIES 1-  
26 15; and 123 BANKING ASSOCIATIONS  
27 1-15,

28 Defendants.

Case No. 2:15-cv-00450-ROS (MHB)

Hon. Roslyn O. Silver

**MOTION TO CLARIFY MEDIATION  
ORDER**

1 DEUTSCHE BANK NATIONAL TRUST  
2 COMPANY, as Trustee for INDYMAC  
3 INDX MORTGAGE LOAN TRUST  
4 2005-AR14, MORTGAGE PASS-  
THROUGH CERTIFICATES SERIES  
2005-AR14,

5 Counterclaimant,

6 vs.

7 KATRINA PERKINS STEINBERGER, as  
8 Executor of the Estate of Charles A.  
Perkins, deceased, and individually,

9 Counterdefendants.  
10

11 DEUTSCHE BANK NATIONAL TRUST  
12 COMPANY, as Trustee for INDYMAC  
13 INDX MORTGAGE LOAN TRUST  
14 2005-AR14, MORTGAGE PASS-  
THROUGH CERTIFICATES SERIES  
15 2005-AR14,

16 Third-Party Plaintiff,

17 vs.

18 SAGUARO DESERT TRUST; KATRINA  
19 PERKINS STEINBERGER, as Executive  
Trustee of Saguaro Desert Trust; M&I  
20 MARSHALL & ILLSLEY BANK, a  
21 Wisconsin Banking Corporation;  
22 QUALITY LOAN SERVICE  
CORPORATION, a California  
23 Corporation; RANCHO ALTA VIDA  
HOMEOWNERS' ASSOCIATION, an  
24 Arizona Non-Profit Corporation; DOE  
25 INDIVIDUALS OR ENTITIES 1-10;  
26 UNKNOWN HEIRS AND DEVISEES  
OF CHARLES A. PERKINS,  
DECEASED.

27 Third-Party Defendants.  
28

1 Defendants Ocwen Loan Servicing, LLC (“Ocwen”), Mortgage Electronic  
2 Registration Systems, Inc. (“MERS”), OneWest Bank, N.A. (“OneWest”) and  
3 Defendant/Counterclaimant/Third-Party Plaintiff Deutsche Bank National Trust  
4 Company As Trustee For IndyMac INDX Mortgage Loan Trust 2005-AR14, Mortgage  
5 Pass-Through Certificates Series 2005-AR14 (“Deutsche Bank as Trustee”) respectfully  
6 move for an order clarifying the mediation order. Specifically, that it is unnecessary for  
7 a representative from Defendant MERS or Defendant Deutsche Bank as Trustee to  
8 personally attend the mediation since a representative of Ocwen will have full authority  
9 to discuss and settle the case on behalf of these defendants at the mediation.<sup>1</sup>

#### 10 **I. PERTINENT FACTS**

11 This lawsuit stems from the default on a promissory note and deed of trust signed  
12 by Charles Perkins (deceased) (“Loan”). The Loan originated in May 2005. Mr.  
13 Perkins passed away on December 20, 2007. Ms. Steinberger is Mr. Perkins’ daughter  
14 and also the personal representative of Mr. Perkins’ estate. Defendant Ocwen is the loan  
15 servicer of the Loan, Defendant OneWest was the prior servicer of the Loan and  
16 Defendant Deutsche Bank National Trust Company As Trustee For IndyMac INDX  
17 Mortgage Loan Trust 2005-AR14, Mortgage Pass-Through Certificates Series 2005-  
18 AR14 (“Deutsche Bank as Trustee”) has been the holder of the Loan since 2005.

19 In 2009 Ms. Steinberger defaulted on the Loan by failing to make the monthly  
20 payments and foreclosure proceedings were initiated. In order to avoid foreclosure, Ms.  
21 Steinberger attempted to negotiate a loan modification with OneWest but these attempts  
22 were unsuccessful. This lawsuit was filed on the eve of the previously scheduled  
23 foreclosure sale. Defendant Ocwen became the servicer of this Loan in 2013.

#### 24 **II. ALL PARTIES WILL APPEAR THROUGH THEIR AUTHORIZED** 25 **REPRESENTATIVES, WITH FULL AND COMPLETE** 26 **AUTHORITY TO DISCUSS AND SETTLE THE CASE.**

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27  
28 <sup>1</sup> See Declarations of Nichelle Jones and Barbara Campbell, attached as Exhibits A and B, respectively.

1 The disagreement that is the subject of this motion became apparent when  
2 Plaintiff's counsel stated the following in an e-mail dated 05/14/2015: "Also I want to  
3 be sure you and your clients understand that we expect a representative from Ocwen,  
4 OneWest and Deutsche Bank all to be present (3 different individuals) in person for the  
5 settlement conference, with authority to settle."<sup>2</sup>

6 Defendants disagree that a representative from Deutsche Bank, as Trustee needs  
7 to attend for the reasons set forth below.

8 The mediation order states (emphasis added):

9  
10 1. All parties and their counsel who are responsible for the case SHALL  
11 physically appear before the undersigned Settlement Judge, courtroom 303,  
12 Sandra Day O'Connor U. S. Courthouse, 401 West Washington, Phoenix, Arizona  
13 on June 16, 2015 at 9:30 AM. The Court has allocated, at a minimum, 2 hours for  
14 the Settlement Conference; however, if meaningful progress is being made the  
15 conference will continue until either the case settles, or meaningful progress is no  
16 longer being made.

17 If the Defendant is an insured party, a representative of that party's insurer with  
18 full and complete authority to discuss and settle the case SHALL physically  
19 appear at the aforesaid date and time. **An uninsured or self-insured corporate  
20 party SHALL physically appear at aforesaid Settlement Conference through  
21 its authorized representative with full and complete authority to discuss and  
22 settle the case. ...**

23 A representative of Ocwen, the loan servicer and attorney-in-fact for Deutsche  
24 Bank, as Trustee is "an authorized representative with full and complete authority to  
25 discuss and settle the case" on behalf of Deutsche Bank as Trustee. Therefore, having a  
26 representative of Ocwen and OneWest present at the mediation will constitute full  
27 compliance with the mediation order.

28 In order to clarify Defendants' position, some background is necessary. The  
Loan originated in May 2005. Shortly after origination, the Loan was securitized and  
transferred to a mortgage-backed trust (IndyMac INDX Mortgage Loan Trust 2005-

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<sup>2</sup> Plaintiff's counsel has not requested that a MERS representative appear in person, so this issue will not be briefed. However, similar to Deutsche Bank as Trustee, Ocwen has full authority to settle this litigation on behalf of MERS.

1 AR15, Mortgage Pass-Through Certificates Series 2005-AR15) (“Trust”). Deutsche  
2 Bank National Trust Company is trustee of the Trust pursuant to the Pooling and  
3 Servicing Agreement dated June 1, 2005 (“PSA”). As trustee of the Trust, and pursuant  
4 to relevant portions of the PSA, Deutsche Bank as Trustee is not responsible for  
5 servicing the Loan. Rather, the PSA vests day-to-day responsibility for servicing all of  
6 the mortgage loans in the Trust, including the subject Loan, with the servicer.

7 The responsibilities of the loan servicer include, but are not limited to, servicing  
8 and administering the loan on behalf of the Trust, including collecting payments and  
9 managing foreclosure proceedings in the event of default. Specifically, Section 3.12 of  
10 the PSA states in part: “The Master Servicer shall use reasonable efforts in accordance  
11 with the Servicing Standard to foreclose on or otherwise comparably convert the  
12 ownership of assets securing such of the Mortgage Loans as come into and continue in  
13 default and as to which no satisfactory arrangements can be made for collection of  
14 delinquent payments.” (Emphasis added.)

15 In addition, the power of attorney between Ocwen and Deutsche Bank, as Trustee  
16 grants Ocwen authority to act on its behalf. In Arizona, a party with power of attorney  
17 has full authority to settle and compromise any claim on the authorizing party’s behalf.  
18 See e.g. *Gomez v. Maricopa County*, 175 Ariz. 469, 474, 857 P.2d 1323, 1328 (App.  
19 1993); *Eardley v. Greenberg*, 160 Ariz. 518, 520, 774 P.2d 822, 824 (App. 1989).

20 Therefore, given that an Ocwen representative will be personally present and  
21 have “full and complete authority to discuss and settle the case,” having an Ocwen  
22 representative attend the mediation will fully comply with the Court’s order.

### 23 **III. CONCLUSION**

24 In light of the foregoing, Defendants request an order clarifying that it is  
25 unnecessary to have a personal representative of MERS and Deutsche Bank as Trustee  
26 appear at the mediation.

27

28

1 Dated: June 11, 2015

2 **HOUSER & ALLISON, APC**

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5 Robert W. Norman, Esq.  
6 Solomon S. Krotzer, Esq.  
7 HOUSER & ALLISON  
8 A Professional Corporation  
9 2929 N. Central Ave., Suite 1560  
10 Phoenix, Arizona 85012  
11 Attorneys for Defendants Ocwen Loan  
12 Servicing, LLC, Mortgage Electronic  
13 Registration Systems, Inc., OneWest Bank,  
14 N.A. and Deutsche Bank National Trust  
15 Company As Trustee For Indymac Indx  
16 Mortgage Loan Trust 2005-AR14, Mortgage  
17 Pass-Through Certificates Series 2005-AR14

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on June 11, 2015, I electronically transmitted the attached document  
20 to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of  
21 Electronic Filing to the following CM/ECF registrants:

22 Barbara J. Forde  
23 BARBARA J. FORDE, P.C.  
24 20247 N. 86<sup>th</sup> Street  
25 Scottsdale, AZ 85255  
26 [barbarajforde@gmail.com](mailto:barbarajforde@gmail.com)  
27 Attorney for Plaintiff

28 s/ Paige R. Kleinwolterink  
Paige Kleinwolterink